

Task Force to Supplement Keeping the Record by Electronic Means

August 1, 2019

10:00 a.m. to 2:00 p.m.

State Courts Building

1501 W. Washington, Phoenix, AZ 85007

Conference Room 119A/B

Present: Samuel A. Thumma; Mr. Dean Brault; Mr. Rolf Eckel; Honorable Pam Gates; Mr. Ed Gilligan; Mr. Bill Hughes (proxy for Ms. Sheila Polk); Mr. Bob James; Ms. Tracy Johnston; Mr. Jacob Jones; and Ms. Kate Roundy

Telephonic: None

Absent/Excused: Ms. Sheila Polk (proxy Mr. Bill Hughes)

Presenters/Guests: Ms. Paula Collins, Maricopa County Superior Court; Ms. Danielle Griffin, Griffin Group International; Ms. Pamela Griffin, Griffin Group International; Ms. Robin Hillyard, County Supervisors Association; and Ms. Kim Portik, Canyon State Reporting

Administrative Office of the Courts: Ms. Cathy Clarich, Ms. Amy Love, Ms. Marretta Mathes, Mr. Marcus Reinkensmeyer, and Mr. Mark Wilson

I. Regular Business

a. Call to Order, Welcome, Introductions, and Opening Remarks

The August 1, 2019 meeting of the Task Force to Supplement Keeping of the Record by Electronic Means was called to order by the Chair, Judge Samuel A. Thumma, at 10:03 a.m. The Chair asked for member and staff roll call and introductions. The Chair provided opening remarks related to the Task Force's purpose.

b. Approval of Meeting Minutes from June 25, 2019 Meeting

The Chair entertained a motion to approve the June 25, 2019 meeting minutes as presented. A motion to approve the minutes was made by Mr. Rolf Eckel, seconded by Mr. Jacob Jones. The motion passed unanimously.

c. June 25, 2019 Meeting Recap

The Chair provide a brief recap of the last meeting's discussions:

- The rationale for the formation of this task force;
- Administrative Order 2019-49 establishing this task force, this task force's charge, and the timeline for this task force to complete its work. The report and recommendations are due by September 1st;
- Future meeting date schedule. The next meeting will be August 26th. This will be the last face-face meeting. August 29th will be a telephonic meeting;
- Roadmap: take information we discuss today, gather it and prepare a report comprised of three sections: (1) suggested changes to rules, statutes, and Arizona Code of Judicial Administration, (2) best practices/alternatives, and (3) opportunities for trial courts to prioritize or triage;
- Goal is to get report to group within about 10 days for comment, get it back, and turn it again for discussion at the August 26th meeting. A fair amount of time on August 26th will be spent on going through the draft report;
- A list of current statutes, rules and code that govern making a court record;
- The shortage of court reporters across the state and several counties' inability to recruit court reporters;
- The Request a Reporter program that ACRA used to have;
- The remote reporting software currently being used in Cochise and Santa Cruz Counties;
- Processes that are being used by other states;
- Ensuring that our recommendations account for equal access;
- The transcription process for Maricopa County and how other counties handle contracting these services;
- Obtaining a listing of court reporter salaries by county; and
- Retention schedules and ensuring that we review the retention schedules if anything from this task force might impact the schedules currently in place.

d. Court Reporter Licensing

Mr. Mark Wilson, Director of the Certification and Licensing Division (CLD), discussed the licensing process for court reporters and how the newly passed legislation regarding reciprocity may impact the licensing process.

The Certification and Licensing Division is responsible for investigating any applicant who would like to be licensed and investigating any complaint received. There are about 400 certified reporters and about 200 registered firms. Mr. Wilson indicated that he does not believe the reciprocity legislation will make a significant impact on the number of new court reporters entering the market in Arizona, but the new legislation will apply later in August.

II. New Business

a. A National Perspective

Mr. Marcus Reinkensmeyer has researched and been in touch with the National Center for State Courts (NCSC). He reported on NCSC studies related to digital recording and best practices, policy, etc., as well as other states' practices.

From the Trends in States Court document, Mr. Reinkensmeyer provided the highlights:

- Prospect of enhanced digital record, e.g., allowing courts to integrate recording system with other digital applications;
- Digital recording can be cost-effective;
- Opportunity to establish that the proceedings of the court belong to the court;
- This will require a change in the way courts operate, and courts need to be much more thoughtful about that, e.g., to be clear about who will be operating the recording equipment;
- Provided list of states that have transitioned to digital recording, to which Pennsylvania should be added;
- Governance, i.e., who will determine when digital recording will be used, which proceedings digital recordings will be used in, and how this would be implemented;
- Components of a successful program, e.g., have clarity on who creates and controls the court record, determine how the record will be accessed (available on webpage, burn CDs, etc.), determine staffing (centralizing staff, having a code of ethics, etc.), add protocols in the courtroom (such as signage) to let people know that they are in an electronic courtroom, attorneys can appropriately handle sidebars, etc.;
- Need to determine access to the records through administrative orders or through judicial code;
- Make sure everyone knows what their role is and how requests for transcripts will be handled (timing, cost, etc.);
- Utah transcript production: went to largely digital recording, used certified court reporters for all transcription, and reduced transcript delays by almost 100 days for the appellate courts; and
- Trends in centralized recording systems. Florida reports about a \$20,000 cost savings per year per courtroom.

Discussion was held regarding accuracy of transcript due to cross-talking, fail-safe systems, etc.

Mr. Reinkensmeyer reviewed the feedback that Ms. Sheila Polk received on behalf of the National District Attorneys' Association (NDAA) regarding practices in other states. He also gave a brief overview of the *Making the Record Utilizing Digital Electronic Recording* document published by the NCSC.

Ms. Tracy Johnston inquired as to whether there was any data on the cost to maintain or upgrade the equipment, how often, etc. Staff will look into this.

Mr. Jones discussed a model in California in which official court reporter pro tempores are used—a process that is set forth by statute. The position is paid, but it is strictly paid by the parties. The responsibilities are outlined, who pays, provisions on what must be done, etc. There is a list of pre-approved court reporters, or the parties may stipulate to who they want to use. Mr. Jones will provide these materials, and staff will circulate them to the members.

b. Court Reporter Perspective

Ms. Kate Roundy and Ms. Tracy Johnston provided the court reporter perspective regarding existing issues surrounding making the official court record and this task force's charge.

Ms. Roundy reported that their position is that it is best to keep court reporters in the areas set forth in statute. She indicated that failures with digital recording are unpredictable, but predictably random. She provided examples.

Ms. Johnston indicated that it is their position that the current language of Arizona Supreme Court Rule 30 already allows for electronic recording to be used, at the discretion of the court, and therefore changes are not necessary.

Ms. Johnston also raised a concern about where the record would be sent to be transcribed. She also pointed out that grand jury is not always held in a courtroom or courthouse, so equipment would have to be installed in the building a county may use for grand jury proceedings.

Ms. Roundy reported on what is being done nationally to bring court reporters into the market. There are two organizations taking measures to recruit court reporters. The first is the National Court Reporters Association (NCRA). This organization launched a program in October 2016 called Discover Steno that has the A to Z program. This is a free program to anyone interested who can come once a week (3 hours per night) for 6 to 8 weeks, and they can learn the steno keyboard. After 6 to 8 weeks, if the person is interested, the program will help the person find a school. Last year, the program started online. There have been over 2,000 students who have participated in the program.

The second organization is Project Steno formed in 2017. Its mission is to “promote the stenographic court reporting captioning profession throughout social media and community outreach with the goal of building a robust pipeline of students into school and graduating them within 2 years.” This organization offers a similar A to Z program. It has a tuition assistance program, they partner with schools, they provide coaching and mentoring, and they are working with the U.S. government

and are focusing on military spouses. They are also in vocational high schools and career educational programs. In the last two years the program has worked with high schools in four states and launched programs in these high schools.

The Arizona Court Reporters Association (ACRA) is making efforts as well. It has reinstituted the Request a Reporter program and has notified its members and outlying counties. The counties can reach out to let ACRA know when they have a trial need, court coverage need, etc., and ACRA will send out an email to its members and post it on its Facebook page. Two requests have been made since the last meeting, one in Yavapai County and one in Greenlee County.

Ms. Roundy discussed licensing reciprocity. She indicated that since the law passed, people have reached out to ACRA because they no longer must pass the Registered Professional Reporter (RPR) licensing requirements. Ms. Roundy encouraged administrators to ensure that the reciprocity information is included in job announcements and advertising.

Ms. Johnston discussed transcript delays. She indicated that sometimes the delay is the court reporter, but many times it is the transcriptionist. However, she indicated that many times the delay from the court reporter is due to the notification received from staff. There are often problems in the procedure related to the timing of the court reporter receiving notice of an appeal, or with an inaccurate notification because sometimes a minute entry will list one court reporter being present when it is actually someone else, and the correct court reporter never gets notified.

Ms. Johnston also suggested allowing more time for providing transcripts for lengthy trials.

Ms. Roundy suggested ensuring that counties work together to cover courtroom calendars. She suggested inter-county workforce exchange, remote reporting at a dedicated location, etc.

Ms. Roundy spoke to the return on investment of digital recording versus court reporting. She suggested that it is not a cost savings for digital recording because there are costs for the initial purchase of the equipment, court monitors, IT personnel, storage, maintenance, updates to hardware and software, and the cost of transcription.

Judge Pam Gates asked if there was data or information regarding the states that went to digital recording and reverted to using court reporters. Ms. Roundy indicated that they could get that information. Judge Gates emphasized the usefulness of data, information, and “lessons learned” in this area.

Mr. Ed Gilligan expressed concerns about how Arizona will recruit and train its way out of the shortage, as national statistics reflect that the shortage is significant, ranging from 5,000 - 6,000; schools have declining enrollments; since 1999, 200 schools have closed; student are no completing programs. He inquired as to whether there is data regarding the number of people being lost to retirement as compared to the number of people we are licensing each year. The Chair will follow up with Mark Wilson.

Mr. Gilligan also inquired as to how many of the 2,000 people who took part in the learning steno program completed and became stenographers in our courts or furthered their learning in the field.

The Chair inquired about the length of time it takes to complete a court reporting program. Ms. Roundy indicated that it depends, but on average it takes about two years.

Mr. Rolf Eckel inquired as to whether there is any partnering with local community colleges to provide court reporter programs. Ms. Roundy indicated that once a person graduates, they must pass the RPR. She also indicated that there is a program at Gateway Community College and that online schools are popular for court reporting.

Mr. Dean Brault inquired as to the cost of a court reporting program. Ms. Roundy estimated the cost to be about \$25,000 for the program.

c. Court Management Perspective

Mr. Rolf Eckel and Mr. Bob James reported on the court management perspective. Mr. Eckel gave an overview of the Arizona Association of Superior Court Administrators (AASCA). AASCA meets quarterly and a regular agenda item for the past 4 - 5 years has been the lack of court reporters and how courts are handling this. Mr. Eckel spoke to the difficulty in the hiring process due to the amount of time it takes (about 4 months). Procedures have since been put in place for provisional licensing.

Mr. Eckel discussed the history of AASCA's work as it relates to the suggested changes to statutory language. He also discussed AASCA's desire to have a mechanism in place that allows for flexibility for court management to determine what the best way is to collect, record, and maintain the court record, as the record belongs to the court.

Mr. James indicated that the driving force of the committee's work under AASCA was dealing with improving the administration of justice. This has been difficult when dealing with how the record should be captured. Mr. James discussed the

“catch all” provision of Rule 30. Mr. James spoke to the responsibility of the trial court for producing the record, and this responsibility is what gives rise to the need for flexibility and puts the court in the best position to determine the appropriate means by which to produce the record.

Ms. Amy Love inquired as to whether fees related to obtaining the record can be deferred or waived, and who ultimately bears that cost. Ms. Love suggested that any statutory modifications should clarify who will bear the costs under these circumstances.

III. Member Discussion

The Chair reviewed the deliverables:

- AOC staff will look into getting updated data from the NCSC;
- Mr. Jones will provide materials regarding California’s pro tempore model for circulation;
- Judge Gates will look into whether other information is available regarding California, New Mexico, Texas, Iowa as to why they reverted from digital recording; and
- The Chair will follow up with Mark Wilson on the incoming and outgoing active court reporters

Discussion was held regarding how to address waivers/deferrals in the report and in statutory changes.

The Chair made mention to ensuring that the concept of treating the time to produce transcripts the same for every proceeding is captured.

The Chair reviewed the next meeting dates and plans for moving forward with drafting the report. The report will be divided into three main sections: (1) recommended changes to statutes, rules, and Arizona Code of Judicial Administration, (2) current efforts to fill in gap in court reporting services, and (3) best practices.

Members discussed what issues they want to highlight, what suggestions they have, and what cautions they want the report to include.

Recommendations should include making updates to bench books.

The member identified the following statutes and rules:

- 38-424 – on its face, it appears that the second clause overrides the first clause in that if a party requests a court reporter, the court has no other option than to grant the request;

- 12-223 – case law does not seem to allow the court to excuse the court reporter from certain proceedings;
- Local Rules – need to review local rules to at least bring to local courts' attention;
- Rule 15.3 ARCrP – permits the parties to have a deposition using someone other than a court reporter;
- 12.7, ARCrP – Court reporter's record of grand jury transcript;
- ACJA §1-603 – content of grand jury transcript;
- 21-312 – grand jury;
- Supreme Court Rule 123(e)(10);
- 18.3, ARCrP – grand jury; and
- 12-221

Mr. Jones suggested keeping the rules that govern taking and recording depositions unchanged. He also indicated that in the event a proceeding is permitted to be recorded by electronic means only, if the record needs to be transcribed, there should be a recommendation about how that would be transcribed and who would transcribe it. Mr. James indicated that this could fall to flexibility with allowing the local court to decide, as he does not want to dictate to the trial court who can transcribe a record. He is, however, supportive of making recommendations. Mr. Reinkensmeyer indicated that NCSC's report suggests that there should be some type of governance if this approach is taken, e.g., administrative order, code of administration, etc.

Ms. Johnston suggested that page rates, ARS 12-224, which have not changed since 1978, should be looked at to give pay increases and stay competitive as opposed to spending money on digital recording. Mr. Dean Brault indicated that the page rate for transcripts should also be reviewed.

Mr. Eckel suggested that we recommend shortening the time for licensing to streamline the process.

IV. Call to The Public

The Chair made a call to the public. There were none.

V. Adjournment

The Chair adjourned the meeting at 1:32 p.m.

Next Task Force Meeting Date:

August 26, 2019

10:00 a.m. – 2:00 p.m.

State Courts Building Conference Room 345 A/B
1501 W. Washington, Phoenix, AZ 85007